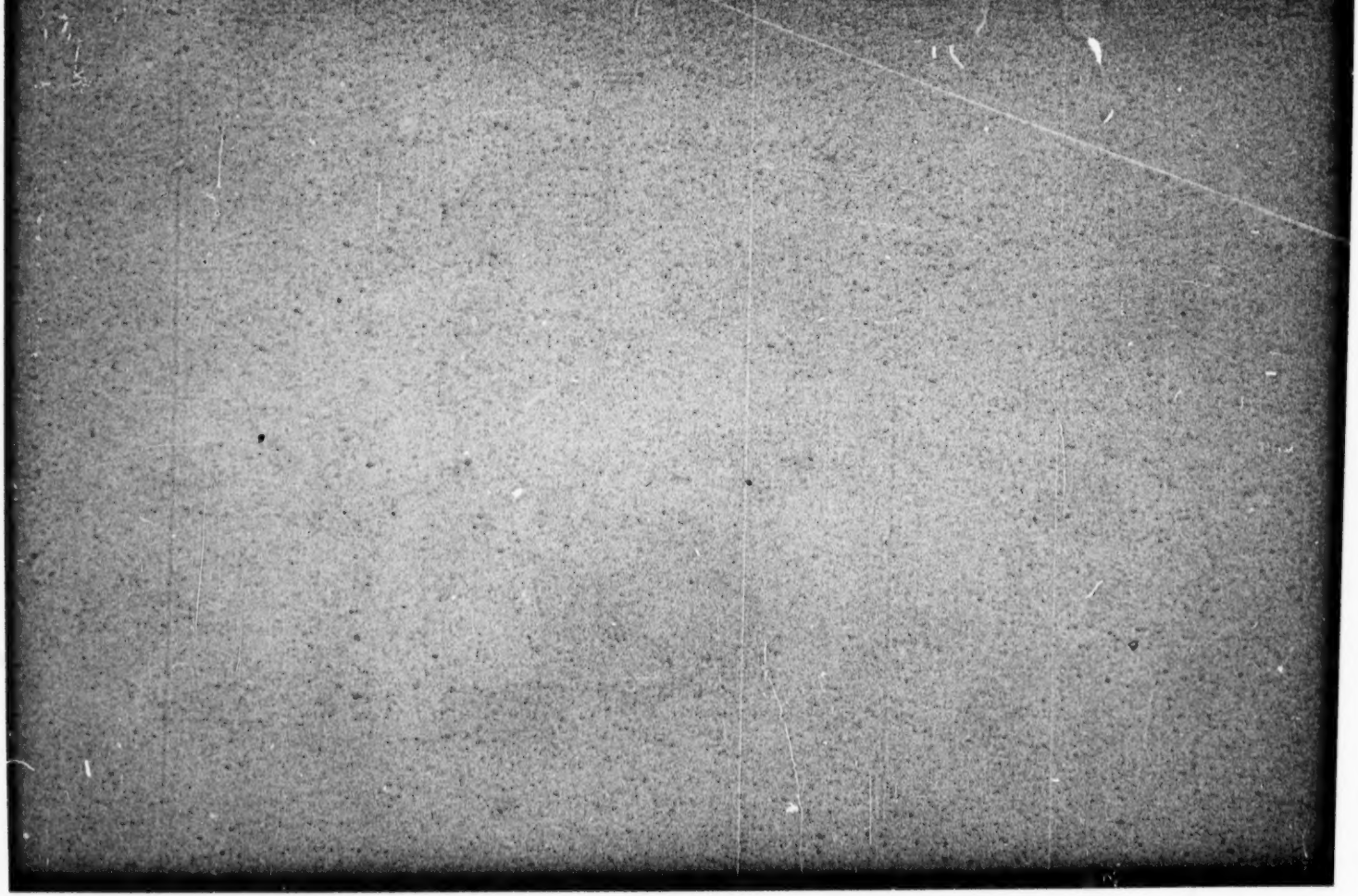

COURT, U. S.

JAN 21 1975

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-272

THE SEMINOLE NATION OF OKLAHOMA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ of Certiorari to
The United States Court of Claims

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

PAUL M. NIEBELL,
910 17th Street, N.W.
Washington, D.C. 20006

Attorney for the Seminole Nation of Oklahoma, Petitioner
(Roy St. Lewis, Deceased)

Of Counsel:

CHARLES BRAGMAN
MICHAEL S. YAROSCHUK

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-272

THE SEMINOLE NATION OF OKLAHOMA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ of Certiorari to The United States Court of Claims

---

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In response to the Government's memorandum in opposition to the granting of the writ of certiorari, petitioner states that the Government fails to rebut the conflicts between the cases cited in the petition, and the decision of the Court of Claims herein. The cases cited in the petition clearly show the conflicts, which this Court should resolve upon the granting of the petition.

1. Respondent has completely ignored the gravamen of the case, which is:

> Whether the passage of Section 11 of the Act of 1908, inserted at the instigation of respondent's Commissioner of Indian Affairs, without the knowledge and consent of the Seminole Nation, and which destroyed the Seminole Nation's one-half interest in the mineral rights and royalties expressly reserved to it in the Seminole Agreement of 1898, created liability of the United States under the fair and honorable dealings provision of Clause 5, Section 2 of the Indian Claims Commission Act.

This issue has never been decided by this Court, nor has Clause 5 been interpreted by this Court. The Court of Claims decision herein is clearly in conflict with its decision in the *Kiowa Case* (Pet. pp. 5, 7, 38, 41), and also with its decision in *United States v. New York Emigrant Indians,* 177 Ct. Cl. 263, 277-279 (1966). Both of these cases hold that where treaties and agreements approved by Congress at the instigation of the Government which destroyed tribal property rights, without the knowledge and consent of the tribe, liability on the part of the United States is established under said Clause 5.

Respondent (Resp. Memo. p. 2) misstates petitioner's contention with respect to Section 11 of the 1908 Act. Petitioner's contention is related to the *manner* in which passage of Section 11 of the 1908 Act was obtained at the instigation of respondent's Commissioner of Indian Affairs, and without the knowledge and consent of the Seminole Nation, to its detriment. Petitioner does not question the power of Congress to change the distribution of tribal property without destroying tribal property rights; but it does question the *manner* in which it was done in this case

so as to bring it within the purview of the new cause of action with respect to fair and honorable dealings created for the first time in 1946 under Clause 5, Section 2 of the Indians Claims Commission Act.

As set forth in the petition, pages 25-26, the destruction of the tribal right by Section 11 of the 1908 Act, without the knowledge and consent of the Seminole Nation, deprived over 90 percent of the individual allottees from participation in the royalties due under the 1898 Agreement. (Appendix, pp. 95a-96a, 99a-100a, 102a, 104a).

2. Contrary to respondent's statements:

a. (Resp. Memo. p. 2, first par.). The record shows that the process of issuing allotment deeds to Seminole allottees was not begun until long after the passage of Section 11 of the 1908 Act. (Appendix to Pet., pp. 96a, 99a-100a);

b. (Resp. Memo. p. 2, last par.). The Commission made no finding that minerals had not been produced in paying quantities prior to the passage of the 1908 Act;

c. (Resp. Memo. p. 2, footnote 4). The dissenting Commissioners never repudiated the "improper motive theory", but affirmed it. This was the focal point of the Commission's unanimous 1966 decision.

3. By citing *Moore v. Carter Oil Company, Fish v. Wise,* and *35 Op. A. G. 421* (Resp. Memo. p. 4), respondent begs the question of the above gravamen of the case. These two cases,[1] and the Attorney General's Opinion, are based

---

[1] These cases involved conveyances made after the passage of Section 11 of the 1908 Act. See *Moore,* pp. 322-324.

upon the 1908 Act itself, and are not based upon the title of the Seminole Nation in one-half of the mineral rights and royalties reserved to the tribe under the 1898 Agreement, before the passage of Section 11 of that Act, and the effect of the *manner* of such passage without the knowledge and consent of the tribe. Moreover, they could not deal with the issue of liability which was created for the first time in 1946 under Clause 5, Section 2 of the Indian Claims Commission Act. The very purpose of the petition is to obtain certiorari in order to resolve the conflict of these two cases and the opinion, with the cases cited in the petition and with respect to the title of the Seminole Nation[2] and liability under said Clause 5.

4. *Goat v. United States* (Resp. Memo. pp. 4-5), dealt only with the question whether restrictions on alienation applied to the interest acquired in surplus lands prior to the 1908 Act, by Seminole Freedmen allottees, who were not of Indian blood, and related solely to the right of occupancy of those allottees. It did not deal with mineral rights and royalties under the 1898 Agreement. That case concerned only "the right to alienate the interest thus acquired", and did not decide the nature of the interest acquired by such allottees prior to the 1908 Act. As stated in the Goat Case, at pages 466-467, the provisions of the 1906 Act, permitting the issuance of Seminole deeds prior to the expiration of the tribal government, did not alter the terms of the 1898 Agreement with respect to tribal title with respect to mineral rights and royalties.

---

[2] These cases and the opinion are in conflict with the authorities cited in the petition with respect to the title of the Seminole Nation (Pet. pp. 34-36).

5. *Woodward v. DeGraffenried* (Resp. Memo. p. 5), is not applicable here. That case dealt with Creek allotments under the Creek Agreement and its relation to the Curtis Act of June 28, 1898, 30 Stat. 495, both of which were not applicable to the 1898 Seminole Agreement.

6. *United States v. Jim* (Resp. Memo. p. 5), is applicable, contrary to respondent's contention. That case holds that when a tribe has the right to lease mineral interests, and the funds therefrom are placed into the tribal treasury, to be distributed at a later time equally to tribal members, the title to the minerals and royalties is in the tribe, and not in the individual tribal members. In the instant case, under the 1898 Agreement the leases of mineral interests were to be made by the Seminole Nation, and one-half of the proceeds therefrom were to be placed into the tribal treasury for distribution equally to all tribal allottees after the tribe ceased to exist. In this respect the two cases are similar. The issue of the change in the pattern of distribution in the *Jim Case* has no bearing on the similarity of tribal title in mineral rights and royalties in the *Jim Case* and this case.

7. *Seminole Nation v. United States* (Resp. Br. pp. 5-6), dealt with Article VIII of the Seminole Treaty of 1856, and Section 19 of the Curtis Act, and did not deal with the Seminole 1898 Agreement, and Section 11 of the 1908 Act. As stated in the petition (p. 39), that case held that the conduct of the United States as trustee of the Seminole Nation, in dealings with the Indians, should be judged by the most exacting fiduciary standards; and therefore, the decision of the Court of Claims is in conflict with that case.

Respondent has advanced no reason why the petition in this case should not be granted.

Respectfully submitted,

PAUL M. NIEBELL,
910 17th Street, N.W.
Washington, D.C. 20006

Attorney for the Seminole Nation of Oklahoma, Petitioner,
(Roy St. Lewis, Deceased)

Of Counsel:

CHARLES BRAGMAN
MICHAEL S. YAROSCHUK